In the High Court of Judicature at Madras

Dated: 17/10/2003

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The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.24694 of 2003
and
WPMP.Nos.30375 & 33992 of 2003

M/s. Cholan Paper and Board Mill
Private Ltd., rep. by its Managing
Director Mr. A.R.M. Govindarajan. .. Petitioner

-Vs-

1. The Commissioner of Customs
Customs House, Tuticorin.

2. Jayakumar
The Asst. Commissioner of
Customs (Imports)
Customs House, Tuticorin. .. Respondents

For petitioner : Mr. R. Thiyagarajan,Sr.Counsel
for Mr. V. Bharathidasan

For respondents: Mr. V.T. Gopalan
Addl. Solicitor General
for Ms. Sarashwathy,A.C.G.S.C.

:ORDER

By consent of both parties, the writ petition itself is taken
up for disposal.

2. M/s. Cholan Paper and Board Mill Private Ltd., aggrieved
by the order of the Commissioner of Customs - first respondent herein dated
27.08.2003, rejecting the request for release of the goods after mutilation,
has filed the above writ petition to quash the same and consequently issue
direction to the respondents to permit mutilation of goods for clearance
covered under Bill of Entry No.325280 dated 07.07.2 003.

3. Heard, Mr. R. Thiyagarajan, learned senior counsel for
the petitioner and Mr. V.T. Gopalan, learned Additional Solicitor General
for the respondents.

4. After taking me through the order of the first respondent, the learned senior counsel for the petitioner would contend that the first respondent failed to appreciate the question and erred in thinking that the request for mutilation was made by the petitioner for the first time on 27.09.2003, after the respondents have found it from their chemical examination report dated 29.07.2003. In support of the said contention, he referred to the earlier correspondence between the petitioner and the second respondent. He also contended that the first respondent has failed to appreciate the claim of the petitioner and committed an error in rejecting the same.

5. On the other hand, learned Additional Solicitor General would contend that it is proved beyond doubt from the chemical examiners report that the goods are not scraped, but un-quoted paper usable for writing / printing attracting higher rate of duty. He also contended that inasmuch as the request for mutilation came only on 29.07.2003, by that time it was found that the goods imported were not waste papers in bales, but found to be white paper in reels, accordingly, the first respondent is fully justified in rejecting the request of the petitioner. He further contended that inasmuch as the petitioner has an effective remedy under Section 129-A of the Customs Act, 1962 (in short "the Act") to the appellate Tribunal, the writ petition before this Court is liable to be dismissed.

6. Inasmuch as an objection has been raised with regard to maintainability of the writ petition on the ground of availability of effective statutory appeal remedy under the Act, I propose to consider the said aspect before going into the other question.

7. There is no dispute that the impugned order has been passed by the Commissioner of Customs, Tuticorin in an application of the petitioner dated 01.08.2003, requesting for release of the consignment after mutilation as provided under Section 24 of the Act. By the order impugned, after considering their claim, rejected their request for release of the goods after mutilation. Section 2 (1) of the Act defines "Adjudicating Authority".

" adjudicating authority means any authority competent to pass any order or decision under this Act, byt does not include the Board, Commissioner (Appeals) or Appellate Tribunal. "

8. There is no dispute that the first respondent adjudicated the claim made by the petitioner and he is the adjudicating authority in terms of the above referred definition. It is also relevant to note Section 129-A of the Act, which reads as under.

"Section 129-A. Appeals to the Appellate Tribunal
(1) Any person aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order -
(a) a decision or order passed by the (Commissioner of Customs) as an adjudicating authority;
(b) .....
(c) .....

(d) ..... "

In the light of the fact that the order has been passed by the Commissioner of Customs as an adjudicating authority. As rightly pointed out by the learned Additional Solicitor General, the petitioner has an effective remedy by way of an appeal to the appellate Tribunal. However, Mr. R. Thiyagarajan, learned senior counsel for the petitioner would contend that inasmuch as the order under challenge dated 27.08.2003 has been passed by the Commissioner of Customs on the representation made by the petitioner, pursuant to the direction of this Court dated 13.08.2003 in W.P.No.21980 of 2003, the petitioner cannot be driven to seek their remedy before the appellate Tribunal. I am unable to appreciate the said contention, since the said order was passed by this Court with a direction to the Commissioner of Customs to consider and dispose of the representation of the petitioner dated 01.08.2003. Merely because this Court has directed the respondents to consider and pass orders and in view of the order which is against them cannot by-pass the statutory remedy and straight away file a writ petition questioning the merits of the order passed by the original authority. I hold that the first respondent, namely Commissioner of Customs, is an "adjudicating authority" within the meaning of Section 2(1) of the Act and against his order dated 27.08.2003, which is impugned in this writ petition, the petitioner has an effective remedy by way of the appeal under Section 129-A of the Act to the appellate Tribunal. In the light of my above conclusion, though both the senior counsel advanced elaborate arguments with reference to merits of the case, I am of the view that it is unnecessary for this Court to consider the same at this juncture.

In the light of what is stated above, the writ petition is dismissed without costs, with liberty to the petitioner to file an appeal before the appellate authority under Section 129-A of the Act. It is made clear that the time taken by the petitioner in prosecuting the writ petition before this Court shall be excluded for the purpose of limitation.

Index:Yes
Internet:Yes

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To
1. The Commissioner of Customs
Customs House, Tuticorin.

2. Jayakumar
The Asst. Commissioner of
Customs (Imports)

Customs House, Tuticorin.